

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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MONDAY, NOVEMBER 22, 1999

At 9:30 a.m., the court met in the Library & Courts Building for a continuation of court calendar session.

PRESERNT: SCOTLAND, Presiding Justice
NICHOLSON, Associate Justice
KOLKEY, Associate Justice

Bailiff: Rios
Calendar called.

Crim. THE PEOPLE
No. v.
C031137 PAUL CARUTHERS BENJAMIN

Cause called. David W. Dratman argued for Defendant-Appellant.
Janine R. Busch, Deputy Attorney General argued for Plaintiff-Respondent.
Cause submitted.

MINUTES OF THE COURT OF APPEAL
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MONDAY, NOVEMBER 22, 1999 CONTINUED

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At 9:59 a.m., court recessed. At 10:01 a.m., court reconvened with the Acting Presiding Justice Sims, Associate Justice Morrison, and Associate Justice Hull.

Civil GAVINM ASHERSON, a Minor, etc.
No. v.
C030984 MAMMOTH MOUNTAIN SKI AREA

Cause called. Paul S. Rudder argued for Plaintiff-Appellant with additional citations. John E. Fagan, of Hancock, Rothert & Bunshoft argued for Defendant-Respondent. Cause submitted.

At 10:25 a.m., court recessed. At 10:26 a.m., court reconvened with the same panel except Presiding Justice Scotland in place of Associate Justice Hull.

Civil JOHN R. BUSENBARK
No. v.
C031382 RSI INCORPORATED

Cause called. Robert P. Biegler, of Biegler, Ortiz & Chan argued for Plaintiff-Appellant. J. Brian Powers, of Bolling, Walter & Gawthrop argued for Defendant-Respondent. Cause submitted.

At 10:55 a.m., court recessed. At 10:56 a.m., court reconvened with the same panel except Associate Justice Callahan in place of Associate Justice Morrison.

Civil MARCO A. PONCA-BRAN
No. v.
C027776 TRUSTEES OF HE CALIFORNIA, etc. et al.

Cause called. Marco A. Ponce-Bran argued for Himself in Pro Per for Plaintiff-Appellant. Corine Lee Murphy, Deputy Attorney General argued for Defendants-Respondents Trustees of the California, etc. et al. Ruben J. Garcia, of Rothner, Segall & Greenstone argued for Defendant-Respondent California Faculty Association. Cause submitted.

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We concur: SCOTLAND, P.J.
DAVIS, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
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Crim. THE PEOPLE (Not for Publication)
No. v.
C030293 NATHAN JOSHUA RAMAZZINI

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: SIMS, J.
MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C032370 MICHAEL JOSEPH CRADDOCK

The trial court shall prepare a corrected abstract of judgment to reflect 106 days of conduct credit in case number SC057311A and forward a certified corrected copy to the Department of Corrections. The judgment is affirmed.

RAYE, J.

We concur; BLEASE, Acting P.J.
HULL, J.

Juvenile In re SAMOEUN K., A Person Coming Under the Juvenile Court Law.
No. THE PEOPLE
C033218 v.
SAMOEUN K.
BY THE COURT:

Appellant having been notified pursuant to rule 17(a) of the California Rules of Court and having failed to file his appellant's opening brief or request the appointment of counsel, the appeal filed on July 19, 1999, is dismissed.

Dated: November 22, 1999

SCOTLAND, P.J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, NOVEMBER 22, 1999 CONTINUED**

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Civil INGOGLIA, MARSKEY, KEARMEY, LOBNER AND BULL et al.
No. v.
C031755 BRIAN FLAHERTY et al.
BY THE COURT:

Pursuant to the written request of the appellants, the appeal filed January 22, 1999, is dismissed. It is further ordered that remittitur issue forthwith. (See Cal. Rules of Court, rule 19(b).)

Dated: November 22, 1999

SCOTLAND, P.J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C032191 RAFAEL DIAZ JR.

The judgment is affirmed.

RAYE, J.

We concur: BLEASE, Acting P.J.
 HULL, J.

TUESDAY, NOVEMBER 23, 1999

Crim. THE PEOPLE
No. v.
C030488 WAYNE EVAN MORRIS
BY THE COURT:

Appellant's petition for rehearing is granted. The opinion filed on October 28, 1999, is vacated, and the cause is resubmitted as of this date.

Dated: November 23, 1999

BLEASE, Acting P.J.

Civil ROBERT C. NEWMAN, II
No. v.
C026284 BOARD OF PSYCHOLOGY et al.
Civil ROBERT C. NEWMAN, II
No. v.
C028353 BOARD OF PSYCHOLOGY et al.
BY THE COURT:

Appellant's petition for rehearing is denied.

Dated: November 23, 1999

MORRISON, Acting P.J.

TUESDAY, NOVEMBER 23, 1999 CONTINUED

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SIMS, Acting P.J.

DAVIS, J.

We concur: SIMS, Acting P.J.
 NICHOLSON, J.

RAYE, J.

We concur: SIMS, Acting P.J.
 CALLAHAN, J.

BLEASE, J.

We concur: SCOTLAND, P.J.
MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
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Crim. THE PEOPLE (Not for Publication)
No. v.
C030941 ANTHONY DWAYNE HALL
The judgment is affirmed.
BLEASE, J.
We concur: SCOTLAND, P.J.
MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030637 SANDRA DENISE FOSTER
The judgment is affirmed.
BLEASE, J.
We concur: SCOTLAND, P.J.
MORRISON, J.

Civil In re the Marriage of CHERYL AND VINCENT CRUZ
No. CHERYL CRUZ (Not for Publication)
C029905 v.
VINCENT CRUZ
The judgment is affirmed.
CALLAHAN, J.
We concur: BLEASE, Acting P.J.
DAVIS, J.

WEDENSDAY, NOVEMBER 24, 1999

Crim. THE PEOPLE
No. v.
C031718 JERRY JUSTIN BABB
BY THE COURT:
Appellant's petition for rehearing is denied.
Dated: NOVEMBER 24, 1999
NICHOLSON, Acting P.J.

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STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, NOVEMBER 24, 1999 OCNTINUED**

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Civil ART PULASKI et al
No. v. (Certified for Publication)
C028525 CALIFORNIA OCCUPATIONAL SAFTY AND HEALTH STANDARDS
 COARD
 AMREICAN TRUCKING ASSOCIATIONS INC. et al.
 AMERICAN FEDERATION OF LABOR AND CONGRESS ON
 INDUSTRIAL ORGANIZATIONS

THE COURT:

It is ordered that the opinion filed herein on October 29, 1999, be modified in the following particulars:

1. ...
2. ...

This footnote will require renumbering of all subsequent footnotes.

Defendant California Occupational Safety and Health Standards Board's petition for rehearing is denied.

There is no change in judgment.

FOR THE COURT:

SCOTLAND, P.J.
DAVIS, J.
CALLAHAN, J.

Civil EPICUREAN ESTHETICS, INC.
No. v.
C030514 JAN HARFORD

THE COURT:

It is ordered that the opinion filed on October 29, 1999, be modified in the following manner:

...

The petition for rehearing is denied.

FOR THE COURT:

SCOTLAND, P.J.
NICHOLSON, J.
MORRISON, J.

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Crim. THE PEOPLE (Not for Publication)
No. v.
C032618 DENNIS DALE WHITE

The judgment is affirmed.

RAYE, J.

We concur: BLEASE, Acting P.J.
HULL, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C032578 CRAIG DEL RICE

The judgment is affirmed.

RAYE, J.

We concur: BLEASE, Acting P.J.
HULL, J.

Civil UNITED PARCEL SERVICE et al.
No. v. (Not for Publication)
C029487 WORKERS' COMPENSATION APPEALS BOARD AND CATHERINE
WHITE

The Board's decision is annulled, and the matter is remanded for
further proceedings consistent with this decision.

SCOTLAND, P.J.

We concur: MORRISON, J.
HULL, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030976 VICTOR ADAM PETKUS

The sentence is vacated and the matter remanded for resentencing. In
all other respects the judgment is affirmed.

SIMS, Acting P.J.

We concur: MORRISON, J.
KOLKEY, J.

MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, NOVEMBER 24, 1999 OCNTINUED

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Civil SOUTH BAY RIVER RAFTERS, INC.
No. v. (Not for Publication)
C029316 ANDREW W. KOVACH et al.

The judgment is reversed and the matter remanded to the trial court with directions to enter a new order denying defendants' motion for summary adjudication. Plaintiff shall recover its cost on appeal.

HULL, J.

We concur: BLEASE, Acting P.J.
 MORRISON, J.

Civil GAVIN ASHERSON, a Minor, etc.
No. v. (Not for Publication)
C030984 MAMMOTH MOUNTAIN SKI AREA

The judgment is affirmed.

HULL, J.

We concur: SIMS, Acting P.J.
 MORRISON, J.

Civil MING LIU (Not for Publication)
No. v.
C031549 STATE PERSONNEL BOARD et al.

The judgment is reversed, the findings of the Board are reinstated, and the matter is remanded to the trial court with directions to deny Liu's petition for writ of mandate. The appellant shall recover its cost on appeal.

HULL, J.

We concur: BLEASE, Acting P.J.
 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030002 DAVID KENNETH NANKIVELL

The judgment is affirmed.

HULL, J.

We concur: BLEASE, Acting P.J.
 SIMS, J.

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WEDNESDAY, NOVEMBER 24, 1999 OCNTINUED

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Juvenile In re ELAINE W. et al., Persons Coming Under the Juvenile Court Law.
No. DEPARTMENT OF SOCIAL SERVICES
 v. (Not for Publication)
C032419 COLEEN W.

The order terminating appellant's parental rights is affirmed.
RAYE, J.

We concur: BLEASE, Acting P.J.
 HULL, J.

Juvenile In re RASHAD B. et al., Persons Coming Under the Juvenile Court Law.
No. SACRAMENTO COUNTY DEPART OF HEALTH AND HUMAN
 SERVICES
 v. (Certified for Partial Publication)
C032603 DOROTHY B.

The orders of the juvenile court are affirmed.
(CERTIFIED FOR PARTIAL PUBLICATION)
SIMS, Acting P.J.

We concur: MORRISON, J.
 KOLKEY, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C032454 RICK SMITH

The judgment is affirmed.
SIMS, Acting P.J.

We concur: NICHOLSON, J.
 KOLKEY, J.

Civil SACRAMENTO NECK & BACK PAIN CENTER et al.
No. v. (Not for Publication)
C028672 STATE FARM INSURANCE

The judgment is reversed. Oranen is granted leave to amend his
complaint to allege his assignment theory. Each side shall pay its own costs
on appeal.

DAVIS, J.

We concur: BLEASE, Acting P.J.
 KOLKEY, J.

**MINUTES OF THE COURT OF APPEAL
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WEDNESDAY, NOVEMBER 24, 1999 OCNTINUED**

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Civil STAMAS CORPORATION (Not for Publication)
No. v.
C028495 MAHENDRA D. SHARMA

The judgment is affirmed.

CALLAHAN, J.

We concur: SCOTLAND, P.J.
 MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030415 GREGORY WAYNE LEWIS

The judgment is modified to impose a section 1202.45 restitution fine of \$3,100 and suspend that fine unless defendant's parole is revoked. The trial court is directed to prepare an amended abstract of judgment to reflect that modification and to send a copy to the Department of Corrections.

As modified, the judgment is affirmed.

SIMS, Acting P.J.

We concur: NICHOLSON, J.
 KOLKEY, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C028607 FREDERIACK RENAE CARTER

The judgment is affirmed.

SCOTLAND, P.J.

We concur: NICHOLSON, J.
 KOLKEY, J.

**MINUTES OF THE COURT OF APPEAL
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Civil ELDA R. SEARS (Certified for Publication)
No. v.
C029431 JENNIE C. MORRISON et al.

The judgment is reversed with directions to the trial court to grant summary judgment in favor of the estate of the deceased, Jennie C. Morrison, and deny the motion for summary judgment as to defendant John D. Morrison. John D. Morrison is to pay Sear's costs of appeal.

MORRISON, J.

We concur: NICHOLSON, Acting P.J.
 HULL, J.

Civil BOEHM & ASSOCIATES et al.
No. v. (Certified for Publication)
C031700 WORKERS' COMPENSATION APPEALS BOARD AND SHELDON
 MOORE, INC. et al

The decision of the appeals board on reconsideration is annulled and the cause remanded for further proceedings consistent with the views expressed herein. (CERTIFIED FOR PUBLICATION)

NICHOLSON, J.

We concur: SCOTLAND, P.J.
 MORRISON, J.

Civil MARCO A. PONCE-BRAN (Not for Publication)
No. v.
C027776 TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY et al.

The judgment of dismissal is affirmed.

SCOTLAND, P.J.

We concur: SIMS, J.
 CALLAHAN, J.

Civil MELVIN E. OLIVER et al.
No. v. (Certified for Partial Publication)
C029233 AT&T WIRELESS SERVICES et al.

The judgment is affirmed. Respondents shall recover their costs on appeal. (CERTIFIED FOR PARTIAL PUBLICATION)

KOLKEY, J.

We concur: SCOTLAND, P.J.
 BLEASE, J.

**MINUTES OF THE COURT OF APPEAL
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Civil QUILLA BEVERLY (Certified for Publication)
No. v.
C031293 ELOISE ANDERSON, as Director, etc.

The judgment (order granting petition for writ of mandate) is affirmed. Beverly shall receive her costs on appeal.

SIMS, Acting P.J.

We concur: DAVIS, J.
 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030407 LAMONT CARTER

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: SIMS, J.
 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C031559 VANCE PATRICK HOPKINS

The judgment is affirmed.

SIMS, J.

We concur: BLEASE, Acting P.J.
 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030501 CHIEKO YANO LEHMAN et al.

The judgment of dismissal is affirmed.

NICHOLSON, J.

We concur: SCOTLAND, P.J.
 SIMS, J.

Civil JOHN R. BUSENBARK (Not for Publication)
No. v.
C031382 RSI IN CORPORATED

The judgment is affirmed.

MORRISON, J.

I concur: SIMS, J.
I concur in the result:

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SCOTLAND, P.J.**

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**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, NOVEMBER 29, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)
No. v.
C031936 ROMERO WILEY

The judgment is affirmed.

BLEASE, Acting P.J.

We con cur: SIMS, J.
NICHOLSON, J.

Civil SAMUEL D. CORTEZ (Not for Publication)
No. v.
C031537 CITY OF STOCKTON

The judgment is affirmed.

MORRISON, J.

We concur: BLEASE, Acting P.J.
NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030574 MICHAEL BARNES

The order that defendant is to have no contact with Michael Jr. "at all ever again" is stricken. As modified, The judgment is affirmed. The superior court is directed to prepare and send a new abstract of judgment of the Department of Corrections.

DAVIS, J.

We concur: SCOTLAND, P.J.
RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030474 ERIC LONNIE NEILL

The judgment is affirmed.

NICHOLSON, J.

We concur: SCOTLAND, P.J.
KOLKEY, J.

**MINUTES OF THE COURT OF APPEAL
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MONDAY, NOVEMBER 29, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)

No. v.

C030064 TIMOTHY MARTIN et al.

THE COURT:

The opinion of this court filed October 29, 1999, in the above entitled case is modified as follows:

...

The modification effects no change in judgment. The motion for judicial notice and the petition for rehearing are denied.

BY THE COURT:

BLEASE, Acting P.J.

NICHOLSON, J.

RAYE, J.

Crim. THE PEOPLE (Not for Publication)

No. v.

C029581 DAVID JOHN JAVIER

The judgment is affirmed.

SIMS, Acting P.J.

We concur: DAVIS, J.

RAYE, J.

Crim. THE PEOPLE

No. v.

C027464 TIMOTHY COON

THE COURT:

It is ordered that the opinion filed on October 29, 1999, be modified in the following manner:

...

This modification does not change the judgment.

The petition for rehearing is denied.

FOR THE COURT:

DAVIS, Acting P.J.

RAYE, J.

MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
TUESDAY, NOVEMBER 30, 1999**

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Civil CYNTHIA PENA (Not for Publication)
No. v.
C31097 WAL-MART STORES, INC.

The judgment is affirmed.

MORRISON, J.

We concur: SCOTLAND, P.J.
 SIMS, J.

Civil MAE NEWMAN (Not for Publication)
No. v.
C027428 DONALD LEE JORDAN et al.
C028310

The award of expenses pursuant to Code of Civil Procedure section 2033, subdivision (o) is reversed and the matter is remanded to the trial court for redetermination of the amount that award consistent with this opinion. In all other respects, The judgment is affirmed. The parties shall bear their own costs on appeal.

SCOTLAND, P.J.

We concur: BLEASE, J.
 CALLAHAN, J.

Civil FORTY-NINER SIERRA RESOURCES INC., et al.
No. v. (Not for Publication)
C028664 NEW MOTOR VEHICLE BOARD
 DEPARTMENT OF MOTOR VEHICLES

The judgment is affirmed.

CALLAHAN, J.

We concur: SCOTLAND, P.J.
 SIMS, J.

WEDNESDAY, DECEMBER 1, 1999

Civil JEANE HESS et al (Not for Publication)
No. v.
C028583 AMCO INSURANCE CO. et al.

The judgment is affirmed except insofar as it excludes coverage for the pewter mug. Amco Insurance Co. shall recover its costs on appeal.

RAYE, J.

We concur: BLEASE, Acting P.J.
 SIMS, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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WEDNESDAY, DECEMBER 1, 1999

Civil JANE CARTER et al (Not for Publication)
No. v.
C029949 THE SUPERIOR COURT OF COLUSA COUNTY
CHRISTOPHER R. STEELE et al.

Let a peremptory writ of mandate issue directing the respondent superior court to vacate its order granting summary adjudication in favor of plaintiffs, to enter a new order denying the motion for summary adjudication, and to conduct further proceedings not inconsistent with the views expressed in this opinion. Having served their purposes, the alternative writ of mandate and order staying further proceedings are discharged upon our opinion becoming final. Defendants shall recover their costs. (Cal. Rules of Court, rule 56.4.)

SCOTLAND, P.J.

We concur: SIMS, J.
 CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029804 TIMOTHY JONATHAN HALL
 The judgment is affirmed.

RAYE, J.

I concur: CALLAHAN, J.
I concur in the result:
 BLEASE, Acting P.J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029983 RICHARD LYNN JONES
 The judgment is affirmed.

SCOTLAND, P.J.

We concur: NICHOLSON, J.
 KOLKEY, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, DECEMBER 1, 1999 CONTINUED**

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Civil THEODIE ROY BROWN
No. v.
C030378 CITY OF SACRAENTO
BY THE COURT:

Pursuant to the court's order dated October 1, 1999, directing the appellant to file a corrected opening brief on or before October 21, 1999, and the appellant having been notified pursuant to rule 17(a) of the California Rules of Court and having failed to file the opening brief, the appeal filed on August 4, 1998, is dismissed.

Dated: December 1, 1999

SCOTLAND, P.J.

THURSDAY, DECEMBER 2, 1999

Civil In re the Marriage of LIDIYA and MIKAIL VASILIU
No. LIDIYA VASILIU
 v.
C034008 MIKAHAIL VASILIU
BY THE COURT:

The trial court having notified this court that appellant failed to file a timely designation as provided for by the rules 5 and 10 of the California Rules of Court, the appeal filed October 28, 1999, is dismissed.

Dated: December 2, 1999

SCOTLAND, P.J.

Civil TAHOE FOREST HOSPITAL DISTRICT
No. v.
C033978 MICHAEL JAMES KUTSKO
BY THE CORUT:

Respondent's motion to dismiss the record IS GRANTED. The notice of appeal filed October 22, 1999, is dismissed. Since there is no single final judgment, it appears that the complaint between these two parties is still pending. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, section 74, p. 129.)

Dated: December 2, 1999

SIMS, Acting P.J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, DECEMBER 2, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)
No. v.
C031076 DEREKE LEE ALFRED

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: SIMS, J.
NICHOLSON, J.

Juvenile In re AUTUMN V., a Person Coming Under the Juvenile Court Law.
(Not for Publication)

No. DEPARTMENT OF HEALTH AND HUMAN SERVICES
C033425 v.
GABRIEL V.

The orders of the juvenile court are affirmed.

RAYE, J.

We concur: SIMS, Acting P.J.
KOLKEY, J.

Juvenile In re BENISHA F. ET AL., Persons Coming Under the Juvenile Court Law.
(Not for Publication)

No. DEPARTMENT OF HEALTH AND HUMAN SERVICES
C032707 v.
SHARON F.

The order terminating appellant's parental rights is affirmed.

RAYE, J.

We concur: SIMS, Acting P.J.
KOLKEY, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C031406 ROBERTO S. PADILLA

The judgment is affirmed.

BLEASE, J.

We concur: SCOTLAND, P.J.
MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, DECEMBER 2, 1999 CONTINUED**

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Civil IRELL & MANELLA LLP
No. v. (Not for Publication)
C029212 SUPERIRO COURT OF SACRAMENTO COUNTY
ASSOCIATION OF CALIFORNIA STATE ATTORNEYS AND
ADMINISTRATIVE LAW JUDGES

Having served its purpose, the alternative writ is discharged. Let a peremptory writ of mandate issue, directing the trial court to vacate its order overruling I & M's demurrer, to enter a new order sustaining the demurrer without leave to amend, and to dismiss ACSA'S Action. I & M shall recover its costs. (Cal. Rules of Court, rule 56.4 (a).)

NICHOLSON, J.

Although I do not agree with the analysis in the lead opinion, I concur in its ultimate determination....

SCOTLAND, P.J.

I respectfully dissent.

RAYE, J.

Civil IRON MOUNTAIN ACQUISITION CO., INC. et al.
No. v. (Not for Publication)
C030739 SPENCER WESTON

Because we determine Iron Mountain cannot prevail as a matter of law, we do not address the other contentions raised by the parties. The trial court's judgment in favor of defendant Weston is affirmed.

NICHOLSON, J.

We concur: DAVIS, Acting P.J.
HULL, J.

Civil COUNTY OF SAN JOAQUIN
No. v. (Not for Publication)
C032180 ANTHONY KEKULAWELA

The judgment is affirmed.

SIMS, ACTING P.J.

We concur: NICHOLSON, J.
KOLKEY, J.